IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Criminal Application No.2954 of 2007

Shri Roshanlal K. Sharma Applicant

Vs.

M/s.Rai Education Society & ors. Respondents

Mr.Anilkumar Patil for applicant.

Mr.P.A.Pol, APP for State.

CORAM: B.H.MARLAPALLE, J.

September 10, 2007.

P.C.

. This is an application seeking special leave to appeal under Section 378(4) of Cr.P.C. The applicant had filed C.C. No.10657/SS/06 under Section 138 of the Negotiable Instruments Act, 1881 on account of two cheques having been dishonoured and the total sum of Rs. 2,25,000/-. The cheques were issued sometime in July 2006.

. It is evident from the impugned order that on 10/5/2007 the complaint was fixed for recording the evidence of the complainant and the complainant was present but his Advocate was absent. The learned

Magistrate, therefore, apprised the complainant that he had to adduce evidence and for that he may file his affidavit by way of examination-in-chief . Despite this the complainant failed to take appropriate steps and instead of filing an application for adjournment in case he required more time, he filed an application for deleting the name of accused no.3. The learned Magistrate noted that in the complaint there were only two accused and the application filed for deletion of accused no.3 was frivolous and, therefore, the application was rejected. The complainant was called upon to adduce evidence and till 5 p.m. neither he nor his Advocate appeared before the Court and under these circumstances, after waiting till 5 p.m. the complaint was dismissed. This behaviour of the complainant clearly indicated a brazenly casual approach adopted by him and his Advocate and in any case the complainant still has a remedy of filing a civil suit for recovery of the amount of Rs.2,25,000/- or the entire debt amount as the case may be. The order passed by the learned Metropolitan Magistrate does not require reconsideration at the hands of this Court specially when the complaints filed under Section 138 of the Negotiable Instruments

Act, 1881 are decided by summary procedure.

. Hence leave to appeal is hereby refused and the application is accordingly rejected.

(B.H.MARL